



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Seals Services, Inc.

File: B-235523

Date: June 20, 1989

DIGEST

1. Protester is not an interested party to challenge award to the low bidder where protester submitted second highest of 12 bids and thus would not be in line for award even if its protest were sustained.
2. Protest based on alleged improprieties in a solicitation that are apparent prior to bid opening must be filed prior to that date.

DECISION

Seals Services, Inc., protests the award of a contract to Priscilla Ann Oaks under invitation for bids (IFB) No. DABT10-89-B-0054, issued by the Army for grounds maintenance services. Seals contends that Oaks' bid should be rejected since it was a below-cost bid and thus it would be impossible for her firm to perform the contract without incurring a loss. Seals Services also contends that certain unspecified inconsistencies in the solicitation resulted in such a wide range of bids as to call into question the validity of the IFB and award.

We dismiss the protest.

Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3553 (Supp. IV 1986), and our Bid Protest Regulations, 4 C.F.R. § 21.1 (1988), a protester must qualify as an interested party in order to have its protest considered by our Office. An interested party is defined as an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 31 U.S.C. § 3551(2); 4 C.F.R. § 21.0(a). Determining whether a party is sufficiently interested involves consideration of a party's status in relation to a procurement. Where there are intermediate parties that have a greater interest than the protester, we generally consider the protester's interest to be too remote

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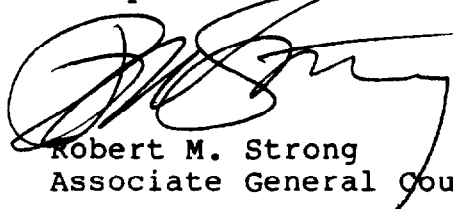
to qualify the protester as an interested party. Brunswick Corp. and Brownell & Co., Inc., B-225784.2, B-225784.3, July 22, 1987, 87-2 CPD ¶ 74. Specifically, a party will not be deemed interested where it would not be in line for the protested award even if its protest were sustained. Id.

Here, the abstract of bids shows that Seals' bid was the second-highest bid out of 12 bids.^{1/} Seals therefore is not an interested party to protest the award to Oaks since it would not be in line for award even if its protest were sustained.

In any event, Seals' contention that Oaks' bid should be rejected because it is unreasonably low is without merit. There is nothing legally objectionable in the submission and acceptance of a below-cost bid. Window Systems Engineering, B-222600, June 2, 1986, 86-1 CPD ¶ 509. If a below-cost bid has been submitted, the question of whether the bidder can perform at that price relates to the responsibility of the bidder, J.D. Bertolini Industries, Ltd., B-219791, Aug. 19, 1985, 85-2 CPD ¶ 193, which must be determined prior to award. Our Office generally does not consider challenges to a determination that a bidder is responsible. 4 C.F.R. § 21.3(m)(5).

To the extent that Seals contends that the IFB is defective due to unspecified "inconsistencies and vagaries," the protest is untimely. Our Regulations, 4 C.F.R. § 21.2(a)(1), provide that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to that date. The purpose of this rule is to enable our Office (or the contracting agency, if a formal protest is filed there) to review the matter and take effective action if warranted--for example, by recommending that the solicitation be amended--when most practicable. See Portec--Request for Reconsideration, B-224537.2, Oct. 27, 1986, 86-2 CPD ¶ 480. Because Seals did not challenge the specifications prior to bid opening, its protest on this ground is untimely.

The protest is dismissed.



Robert M. Strong
Associate General Counsel

^{1/} Although 13 bids were received, 1 bidder was allowed to withdraw its bid.